



SEP 30 2005

The Honorable Haley Barbour
Governor of Mississippi
Post Office Box 139
Jackson, Mississippi 39205

Dear Governor Barbour:

We are pleased to be able to respond positively to your request for waivers and work-flex designation to help you respond to the devastation caused by Hurricane Katrina. This action is taken under the Secretary's authority to waive certain requirements of WIA Title I, subtitles B and E and sections 8-10 of the Wagner-Peyser Act. The request is written in the format identified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c), and appears to meet the standard for approval at 20 CFR 661.420(e) and 20 CFR 661.430. The following is the disposition of the state's submission (copy enclosed).

Requested Waiver 1: Waiver of the administrative cost limitation set forth at WIA section 128(b)(4)(A) and 20 CFR 667.210(a)(2).

The state indicates that the hurricane has created the need for additional administrative expenditures to replace losses and to handle the increased demand for workforce services. Accordingly, we are approving a waiver of the administrative cost limitation at WIA section 128(b)(4)(A) and 20 CFR 667.210(a)(2). This waiver will allow you to extend flexibility to those local areas that demonstrate need, using criteria developed by the state. Authority for this waiver is limited to six months from the date of approval.

Requested Waiver 2: Waiver of the funds transfer limitation at WIA section 133(b)(4).

This waiver request for funds transferability is consistent with one of the improvements that the Administration is seeking in the reauthorization of the Workforce Investment Act—the consolidation of the WIA Adult, WIA Dislocated Worker and Wagner-Peyser Act (Employment Service) funding streams. Accordingly, the state is granted a waiver of the funds transfer limitation at WIA section 133(b)(4). This waiver permits the state to approve local area requests to transfer amounts of up to 100 percent of local area allocations between the Adult and Dislocated Worker programs.

Requested Waiver 3: Waiver of the language that limits the authority to provide the activities identified in WIA section 134 to the state.

The state is seeking flexibility to use local funds in areas impacted by the hurricane. Accordingly, we are granting a waiver of the language that limits the authority to provide the activities identified in WIA section 134 to the state. This will permit local areas impacted by the hurricane to request the use of up to 100 percent of local area formula allocation funds to provide statewide employment and training activities. Local areas not affected by the hurricane may request the use of up to 25 percent of local area funds to provide such activities. Under the waiver, local areas granted this flexibility by the Governor must continue to conduct the required local employment and training activities at WIA section 134(d). In addition, the state must continue to meet the performance and reporting requirements applicable to local area funds.

Requested Waiver 4: Waiver to permit the state to develop more flexible recapture and reallocation policies.

The state indicates that this waiver will allow for the more efficient use of limited funds and will give the state the ability to target funds to local areas most in need. Accordingly, we are approving a waiver of the reallocation provisions at WIA sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160. Under the waiver, the state is permitted to implement the following features: 1) mid-year deobligation and reallocation of local area funds; 2) recapture of funds from local areas that have not expended at least 80 percent of their local funds in the first year; 3) use of recaptured funds for statewide activities or reallocation to other eligible local areas; 4) use of additional factors in determining local area eligibility for a reallocation of recaptured funds, including demonstrated need and ability to use additional funds.

Requested Waiver 5: Waiver of the required 50 percent employer match for customized training.

The state is granted a waiver of the required 50 percent employer match for customized training at WIA section 101(8)(C) to permit local areas to offer a sliding scale match based on criteria developed by the state. This should be particularly useful for businesses impacted by the hurricane and those training hurricane-impacted individuals.

Requested Waiver 6: Waiver of WIA section 101(31)(B) to increase the employer reimbursement for on-the-job training.

The state is seeking this waiver for hurricane-impacted businesses and those training hurricane-impacted individuals. We are granting a waiver of WIA section 101(31)(B) to permit reimbursement of up to 100 percent of the wage rate to compensate for the

employer's extraordinary costs. Under the waiver, the state should develop criteria for determining reimbursement rates. We urge the state to continue to leverage employer resources to jointly meet workforce needs. It is intended that maximum flexibility under this waiver be applied only to those businesses that demonstrate great need. Authority for this waiver is limited to six months from the date of approval.

Requested Waiver 7: Waiver of performance provisions at WIA sections 136(b) and (c) for those participants who were served in impacted state and local areas leading to the displacement of their WIA participants.

The state indicates that local areas on the Gulf Coast have lost their current WIA participants to other local areas, and in many cases, other states. The state is requesting a waiver to exclude from the performance measures those participants who have been forced from their local area or state due to the hurricane or who cannot participate as planned due to damage to an entity or facility such as a training provider or on-the-job training employer.

Accordingly, we are approving a waiver to permit the state to exclude individuals affected by Hurricane Katrina from the calculation of state and local performance measures identified at WIA sections 136(b) and (c). This waiver applies to those participants who have been displaced from their local area as a result of the hurricane or who are unable to participate in planned WIA activities due to damage to a facility or entity such as a training provider or on-the-job training employer. However, the state must include these displaced participants in its annual WIASRD submissions, using a special notation of their status in the global exclusion field. At this time, we are not granting a waiver of all reporting and recordkeeping requirements for individuals impacted by the hurricane.

We understand that the impact of this event on the workforce investment system in your state may not yet be fully felt and that the state may identify additional barriers related to performance in the near future, for which waivers may be sought. ETA is open to reviewing with the state Department of Labor policies and definitions for certain performance measures that may be adversely impacted as a result of the Hurricane Katrina damage. We recognize that future performance may also be impacted and will work with the state to address those impacts as appropriate.

Requested Waiver 8: Waiver of the provision of WIA section 122 to allow an exemption of the requirement for providers of training services to meet the criteria for an eligible training provider.

Eligible training provider provisions are excluded from the waiver authority, and cannot be waived. However, we are able to grant a waiver to extend the time limit on

the period of initial eligibility at 20 CFR 663.530. Additional flexibility in this area is described below in our response to your request for work-flex designation.

Requested Waiver 9: Waiver of the limitation on the use of funds for capitalization of businesses at WIA section 181(e).

The state is seeking this waiver to assist businesses that were destroyed by the hurricane and to help individuals create new self-employment opportunities. Accordingly, we are approving a waiver of this provision to permit WIA funds to be used to capitalize a small business up to \$5,000. Under the waiver, this activity must be conducted in concert with entrepreneurial or microenterprise training for the individuals benefiting from the capitalization.

Requested Waiver 10: Waiver of the requirement that local programs provide each of the ten youth program elements at WIA section 129(c)(2) as options available to youth participants.

We are granting this waiver to provide flexibility in services to youth in areas impacted by the hurricane. Such a waiver will allow affected local areas to focus on the youth services most needed.

Requested Waiver 11: Waiver of the youth eligibility requirements at WIA section 101(13)(B) and (C) for youth displaced by the hurricane.

The state seeks to provide needed services to a different hard-to-serve population that could not have been anticipated. We have interpreted this as a request to serve youth who have been affected by the hurricane but do not meet the WIA youth eligibility guidelines. While we understand the state's desire to provide services to all youth affected by the disaster, we do not have the authority to waive provisions related to eligibility of participants. The statute provides some flexibility to states in this area through a limited exception to the low-income criterion at WIA section 129(c)(5).

Some youth may be eligible for WIA services based on circumstances created by the hurricane. An eligible youth is defined in WIA section 101(13) of the Act and 20 CFR 664.200 as between 14 and 21 years of age, low income and having one or more defined barriers, with homelessness being one of the barriers. One of the criteria of a low-income individual as defined in WIA section 101(25) is one who qualifies as homeless as defined by the McKinney Homeless Assistance Act. Youth who are members of families who have lost their homes in the areas affected by Hurricane Katrina may be considered homeless individuals in the areas in which they were forced to relocate. In addition, the areas in which they locate may be considered their state and local area of residence. For guidance about documenting and verifying youth

eligibility, the state is encouraged to review Training and Employment Guidance Letter 12-01, Attachment C.

Requested Waiver 12: Waiver to permit the use of Individual Training Accounts (ITAs) for youth participants.

We are granting a waiver of the prohibition on the use of ITAs for older and out-of-school youth at 20 CFR 664.510, through June 30, 2007. The state should ensure that funds used for ITAs are tracked and reflected in the individual service strategies for these youth.

Requested Waiver 13: Waiver of 20 CFR 664.450(b) under WIA section 129(c)(2)(I) that requires all youth participants to receive some form of follow-up services for a minimum duration of 12 months.

The state indicates that many youth participants displaced by the hurricane may receive services in temporary locations and return to their homes or move to new locations. Accordingly, we are granting a waiver of 20 CFR 664.450(b). This waiver applies only in cases where the 12-month requirement for follow-up services cannot be met due to the movement of hurricane-impacted youth out of a local area.

Requested Waiver 14: Waiver of the requirement at WIA section 123 that eligible providers of youth activities be identified on a competitive basis.

The state indicates that this waiver is needed in areas where service providers have diminished capacity or where there is a dearth of providers. We are granting a waiver of the WIA section 123 requirement to competitively select providers of the ten youth program elements in cases where the number of training providers is limited or the capacity of training providers is diminished as a result of the hurricane. The state may also want to consider the available flexibility to use mechanisms other than Individual Training Accounts to provide training services, described at 20 CFR 663.430.

In addition to waivers, the state is requesting designation as a work-flex state. In its work-flex plan, the state indicates that it will likely waive provider eligibility provisions applicable to local areas under WIA section 122. The plan says that this will be valuable due to the increased demand for training and the limited availability of training providers in certain local areas as a result of the hurricane. As other local level barriers are identified during the recovery process, the state indicates that additional work-flex waivers are likely to be granted. Accordingly, we are approving designation of the state as a work-flex state. Under work-flex, the state may grant waivers of provisions at WIA section 122 applicable to local areas, and will ensure that training providers are helping individuals with skills in-demand that lead to sustainable employment. Additionally, the state will submit to the Regional Office the process by which local

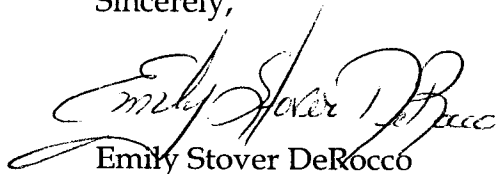
areas may submit and obtain state approval of applications for work-flex waivers, and a list of other local provisions that it anticipates waiving.

Finally, Mississippi is requesting to apply waivers 5, 6 and 9 to the National Emergency Grant (NEG) funds received in response to Hurricane Katrina. These include the waiver of the employer match for customized training, the waiver to increase employer reimbursement for on-the-job training, and the waiver to permit capitalization of small businesses. We have interpreted this as a request for permission to conduct the types of activities that have been approved under the identified waivers using NEG funds; therefore, it is allowable. The state should describe its plans to use NEG funds to conduct such activities in its fully documented NEG project plan.

The waivers and work-flex designation are approved through July 30, 2007, unless otherwise specified. We will consider a request for an extension of the administrative cost waiver, approved for a period of six months, if continued need is demonstrated. The precise programmatic and performance outcomes for the granted waivers and work-flex designation will be negotiated with the ETA Regional Office within the next three months. As indicated in our letter dated September 13, 2005, your submission of these requests and ETA's approval do not require the state to use all of the authority granted. Please inform the ETA Regional Office of the waivers you decide to implement.

The granted waivers and work-flex designation are incorporated by reference into the state's WIA Grant Agreement, as provided for under paragraph 3 of the executed Agreement, and constitute a modification of the state's approved two-year strategic plan. A copy of this letter should be filed with the state's WIA Grant Agreement and the state's approved two-year strategic plan, as appropriate. We hope that these waivers will be of use to you during this time of crisis. We are prepared to entertain other state and local level waiver requests that you may wish to submit, consistent with the provisions of the WIA statute and regulations.

Sincerely,



Emily Stover DeRocco

Enclosure